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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN LUIS OBISPO

**PEOPLE OF THE STATE OF
 CALIFORNIA, ex rel. MAZIAR
 MOVASSAGHI, ACTING DIRECTOR,
 CALIFORNIA DEPARTMENT OF TOXIC
 SUBSTANCES CONTROL,**

Plaintiff,

v.

**JOSLYN SUNBANK COMPANY LLC, a
 California Corporation,**

Defendant.

CV 070208

[PROPOSED]

SECOND AMENDMENT TO FINAL
 JUDGMENT AND PERMANENT
 INJUNCTION PURSUANT TO
 STIPULATION

(Code of Civil Procedure § 664.6)

Plaintiff the People of the State of California ex rel. Maziar Movassaghi, Acting Director of the Department of Toxic Substances Control ("Plaintiff" or the "Department") and Defendant Joslyn Sunbank Company LLC ("Defendant" or "Sunbank") having consented to the entry of this Second Amendment to Final Judgment and Permanent Injunction ("Second Amendment to Final Judgment") prior to the taking of any proof and without a trial or adjudication of any fact or law herein, and

1 The Court having considered the Final Judgment and Permanent Injunction Pursuant to
2 Stipulation ("Final Judgment"), the Amendment to Final Judgment and Permanent Injunction
3 Pursuant to Stipulation ("Amendment to Final Judgment"), and the Stipulation for Entry of
4 Second Amendment to Final Judgment and Permanent Injunction; and good cause appearing
5 therefore,

6 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:**

7 **JURISDICTION AND VENUE**

8 1. Jurisdiction exists over this matter pursuant to Health & Safety Code sections 25181,
9 25189, and 25189.2 and pursuant to the Final Judgment and Amendment to Final Judgment.
10 Venue is proper pursuant to Health & Safety Code section 25183.

11 **APPLICABILITY**

12 2. The provisions of the Second Amendment to the Final Judgment, and the underlying
13 Stipulation for Entry of Second Amendment to Final Judgment and Permanent Injunction (which
14 is attached hereto as Exhibit A and incorporated by reference), shall apply to and be binding on
15 Defendant, its subsidiaries and divisions, its parent companies, its officers and directors, its
16 agents, employees, contractors, consultants, successors, assignees, and representatives, and all
17 persons, partners, corporations and successors thereto, or other entities, acting by, through, under,
18 or on behalf of Defendant, and upon Plaintiff and any successor agency of Plaintiff that may have
19 responsibility for and jurisdiction over the subject matter of this Final Judgment. This Second
20 Amendment to Final Judgment shall in no way impair the force or effect of, or change the
21 Department's right(s) to enforce, or any rights Sunbank has under, the original Final Judgment,
22 entered March 27, 2007 and/or the Amendment to Final Judgment, entered August 20, 2009, in
23 this matter. The Second Amendment to Final Judgment is in addition to the Final Judgment and
24 Amendment to Final Judgment.

25 **INJUNCTION**

26 3. The Enjoined Parties (which include Sunbank, its subsidiaries and divisions, its
27 officers and directors, its agents, employees, contractors, consultants, successors, assignees, and
28 representatives, and all persons, partners, corporations and successors thereto, or other entities,

1 acting by, through, under, or on behalf of Sunbank), pursuant to Health and Safety Code sections
2 25181 and 25184, shall do the following:

3 3.1. Within 60 days from entry of this Second Amendment to Final Judgment, Sunbank
4 shall initiate and cause to be performed by a qualified and independent third party, a
5 comprehensive hazardous waste audit of conditions, operations and practices (Audit), to be
6 conducted at the facility located at 1740 Commerce Way, Paso Robles, California. The purpose of
7 the Audit is to better inform and expedite Sunbank's continuing environmental compliance
8 efforts, especially with regard to the HWCL and its associated regulations. The third party shall
9 be either a Registered Environmental Assessor or Professional Engineer, licensed in California,
10 and knowledgeable and experienced in environmental regulations, including but not limited to the
11 HWCL and its associated regulations, as well as other state, federal, and local environmental
12 laws, regulations, and ordinances.

13 3.2. Sunbank shall conduct an Audit every twelve months for a period of time not to
14 exceed 5 years.

15 3.3. By April 1, 2011, and by April 1 of each successive year thereafter, for up to 5 years,
16 Sunbank shall submit to the Department a report (Audit Report) that describes the Audit and
17 findings, analysis, conclusions, and recommendations resulting from the Audit. The Audit Report
18 shall include all measures taken, or timelines to be implemented, to address the findings,
19 conclusions, and recommendations identified in the Audit Report. Sunbank shall promptly
20 correct any violations discovered during the Audit as required by federal, state, and local law.

21 3.4. Following the initial Audit and each Audit thereafter, Sunbank shall provide the
22 Department with quarterly status reports on or before July 1, October 1, and January 1. The final
23 quarterly report shall be submitted on or before April 1 of the last year of required reporting, and
24 shall provide a summary of the past Audits, their findings, and Sunbank's actions from each
25 Audit.

26 3.4.1. The quarterly reports shall detail all actions taken or being taken to address the
27 findings, conclusions and/or recommendations in the Audit Report for that year.

28 ///

1 3.4.2. The quarterly status report may also address additional items including, but not
2 limited to: hazardous waste training provided to employees, changes in hazardous waste
3 operations, changes in tiered permitting treatment operations and associated notifications,
4 revisions to the closure cost estimate, updates to financial responsibility mechanisms, tank
5 certifications and assessment reports, compliance status with local waste discharge permit
6 requirements, and adjustments to the waste water treatment system.

7 3.5. The findings of the Audit, Audit Report and quarterly report are in no way binding on
8 the Department or on Sunbank. The Department shall, in its sole discretion, determine the
9 classification associated with violations, if any, whether discovered as a result of an Audit,
10 inspection or any other method, and in no way delegates or waives its enforcement authority.
11 Sunbank in no way waives any defenses it may have to any alleged violations or any rights it may
12 have under law. Furthermore, the Department's action or inaction under this Stipulation and/or
13 the Second Amendment to Final Judgment and Permanent Injunction neither impairs nor waives
14 the Department's authority to enforce the HWCL or its associated regulations.

15 3.6. Early Termination of Injunctive Requirements.

16 Upon written confirmation from the Department, Sunbank may terminate the audit process
17 and quarterly reporting if the Department finds no Class I violations for a period of two
18 consecutive years.

19 3.6.1. A quarterly report will still be required, however, if there is any outstanding
20 corrective action and/or corrective activity that cannot be completed within the two consecutive
21 years where no Class I violation was found by the Department. Such quarterly reports will be
22 required until the corrective action and/or corrective activity has been completed and shall
23 document that completion.

24 3.6.2. The written confirmation will be provided by DTSC within ninety (90) days of
25 Sunbank's written request. No quarterly report will be required once Sunbank has submitted the
26 written request to terminate the audit process. If DTSC denies Sunbank's request to terminate the
27 audit process, quarterly reporting shall resume in the following quarter and provide information
28 about Sunbank's activities since its request for early termination.

1 4. Monetary Settlement Requirements.

2 4.1. Sunbank shall pay the Department the sum of Two Hundred Thousand Dollars

3 (\$200,000), in settlement of the Department's claims, as follows:

4 4.1.1. The sum of \$135,000, as and for civil penalties under the HWCL;

5 4.1.2. The sum of \$20,000 for the Department's administrative costs;

6 4.1.3. The payments for civil penalties and administrative costs are due within forty-

7 five (45) calendar days of entry of this Second Amendment to Final Judgment;

8 4.1.4. The sum of \$45,000 for a Supplemental Environmental Project (SEP) to be

9 proposed by Sunbank to the Department within six months of the entry of this Second

10 Amendment to Final Judgment subject to the following conditions:

11 a. Any proposed SEP and proposed cost figure for allowance must be

12 consistent with the Department's guidelines regarding SEPs

13 (<http://www.calepa.ca.gov/Enforcement/Policy/SEPGuide.pdf>) and approved by the Department

14 in writing at its sole discretion prior to implementation of the proposed SEP.

15 b. The Department's decision letter regarding the SEP will include its

16 approval decision, as well as the costs to be allowed (Allowed Cost) as noted below.

17 c. If Sunbank does not have a DTSC approved SEP within one year of the

18 date of entry of this Second Amendment to Final Judgment, Sunbank shall pay the \$45,000 to the

19 Department as civil penalties. If the Allowed Cost of the SEP is less than \$45,000, Sunbank shall

20 pay the Department, the difference between \$45,000 and the Allowed Cost of the SEP as civil

21 penalties.

22 d. Any such payment shall be due within forty-five (45) days of the date of

23 the Department's written notice to Sunbank of the amount owing, if any, under this provision, and

24 no later than thirteen (13) months from the entry of this Second Amendment to Final Judgment.

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1 4.2. All payments required under the Second Amendment to Final Judgment shall be
2 made payable to the California Department of Toxic Substances Control, and mailed to:

3 Cashier
4 Accounting Office
5 Department of Toxic Substances Control
6 P.O. Box 806
7 Sacramento, CA 95812-0806.

8 4.2.1. The checks shall bear on their face the phrase "DTSC # HWCA 20092388."

9 4.2.2. A photocopy of all checks and payments made pursuant to this Second
10 Amendment to Final Judgment shall be sent, at the same time, to:

11 Charles A. McLaughlin, Performance Manager
12 State Oversight and Enforcement Branch
13 Enforcement and Emergency Response Program
14 Department of Toxic Substances Control
15 8800 Cal Center Drive
16 Sacramento, CA 95826-3200

17 Vivian Murai, Senior Staff Counsel
18 Office of Legal Counsel, MS-23A
19 Department of Toxic Substances Control
20 1001 I Street
21 P.O. Box 806
22 Sacramento, CA 95812-0806

23 and to

24 Rose B. Fua
25 Deputy Attorney General
26 State of California Department of Justice
27 Attorney General's Office
28 1515 Clay Street, 20th Floor
 Oakland, CA 94612

 Copies sent to Vivian Murai and Rose Fua may be electronic copies (i.e., Adobe PDF files
sent to vmurai@dtsc.ca.gov and rose.fua@doj.ca.gov, respectively) rather than paper copies.

 4.3. If Sunbank fails to make any payment as provided above, Sunbank agrees to
pay interest at the rate established for civil judgments and to pay costs incurred by the
Department in pursuing collection including attorneys fees.

OTHER PROVISIONS

5. **Retention of Jurisdiction.**

The Court shall retain jurisdiction of this matter to implement the Final Judgment, Amendment to Final Judgment, and Second Amendment to Final Judgment.

6. **Enforcement of Judgment.**

Any party may, by motion or order to show cause before the Superior Court of San Luis Obispo County, enforce the terms and conditions contained in this Second Amendment to Final Judgment, Final Judgment and/or Amendment to Final Judgment. Where a failure to comply with this Second Amendment to Final Judgment, Final Judgment, and/or Amendment to Final Judgment constitutes future violations of the HWCL, or other laws independent of this Second Amendment to Final Judgment, Final Judgment, and Amendment to Final Judgment, the Department is not limited to enforcement of this Second Amendment to Final Judgment, Final Judgment, and/or Amendment to Final Judgment, but may seek in another action, subject to satisfaction of any procedural requirements, including notice requirements, fines, costs, fees, penalties, injunctive relief or remedies as provided by law for failure to comply with the HWCL, its regulations or other laws.

7. **Modification.**

This Second Amendment to Final Judgment, Final Judgment, and Amendment to Final Judgment may be modified from time to time by express written agreement of the parties, with the approval of the Court, or by an order of this Court in accordance with law.

8. **Acknowledgment and Satisfaction of Judgment**

If Sunbank provides the Department with satisfactory evidence of compliance with the monetary obligations contained within paragraph 4 of this Second Amendment to Final Judgment, Sunbank may, within one hundred fifty (150) days from the effective date of this Judgment, request in writing that the Department execute an acknowledgment of satisfaction of judgment for the monetary obligations that have been paid.

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9. **Entry of Judgment.**

The Clerk of the Court is ordered to enter forthwith this Second Amendment to Final Judgment, and to provide promptly to the parties, notice of entry of the Second Amendment to Final Judgment.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: DEC 14 2010

/S/ MARTIN J. TANGEMAN

Judge of the Superior Court

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EXHIBIT A

1 EDMUND G. BROWN JR.
Attorney General of California
2 MATTHEW RODRIQUEZ
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3 KEN ALEX
SENIOR ASSISTANT ATTORNEY GENERAL
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9 *Attorneys for Plaintiff*

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN LUIS OBISPO
13

14 **PEOPLE OF THE STATE OF**
15 **CALIFORNIA, ex rel. Maziar Movassaghi,**
16 **Acting Director, California Department of**
Toxic Substances Control,

17 Plaintiff,

18 v.

19 **JOSLYN SUNBANK COMPANY LLC, a**
20 **California Corporation,**

21 Defendant.
22

CV 070208

STIPULATION FOR ENTRY OF SECOND
AMENDMENT TO FINAL JUDGMENT
AND PERMANENT INJUNCTION

(Code of Civil Procedure § 664.6)

23 Plaintiff the People of the State of California ex rel. Maziar Movassaghi, Acting Director of
24 the Department of Toxic Substances Control ("Plaintiff" or the "Department") and Defendant
25 Joslyn Sunbank Company LLC ("Defendant" or "Sunbank") enter into this Stipulation for Entry
26 of Second Amendment to Final Judgment and Permanent Injunction ("Stipulation") to resolve six
27 alleged violations of the Final Judgment and Permanent Injunction and the Amendment to Final
28

Judgment and Permanent Injunction, (collectively referred to as "Judgments") and the Hazardous Waste Control Law. The Department and Sunbank, collectively "the Parties," agree as follows:

1. **Enforcement of Final Judgment and Permanent Injunction.**

On March 28, 2007, this Court entered its Final Judgment and Permanent Injunction Pursuant to Stipulation ("Final Judgment") in this matter to resolve alleged violations at Sunbank's facility of the Hazardous Waste Control Law ("HWCL", Health and Safety Code sections 25100 et seq.) and the associated regulations (Cal. Code Regs, tit. 22, Division 4.5, sections 66000 et seq.).

On August 20, 2009, the Court entered the Amendment to Final Judgment for a settlement of a subsequent alleged violation of the Final Judgment.

The Final Judgment and Amendment to Final Judgment provides that the Court retains jurisdiction to enforce the terms of the Judgments. (Final Judgment, Paragraphs 5 and 6; Amendment to Final Judgment, Paragraph 22.) When the Court signed the Amendment to Final Judgment in August 2009, it scheduled a Case Management Conference for August 2010.

2. **Violation of Judgments and Permanent Injunction.**

The Department conducted an inspection of Sunbank's facility in February 2010 to determine whether it was in compliance with the Judgments and the HWCL. The Department alleges in its Inspection Report dated June 17, 2010 ("Report") and its financial responsibility review findings dated July 12, 2010 ("FR Findings"), that it found six violations of the Judgments and/or the HWCL:

- a. Treatment of cyanide solution exceeding 5,000 milligrams per liter;
- b. Failure to submit separate Onsite Treatment Unit Notification forms;
- c. Failure to provide initial and annual training on how to reduce cyanide waste;
- d. Failure to comply with permit by rule requirements by discharging effluent to a Publicly Owned Treatment Works in excess of applicable waste discharge requirements;
- e. Accumulation of hazardous waste on the floor;

1 f. Failure to have adequate financial assurance in place for closure of the
2 wastewater treatment unit.

3 The Department agrees that as of September 30, 2010, Sunbank has corrected all of the
4 alleged violations cited in the Report.

5 3. **Agreement to Settle Dispute.**

6 The Parties enter into this Stipulation pursuant to a compromise and settlement by mutually
7 consenting to the entry by this Court of the Proposed Second Amendment to Final Judgment and
8 Permanent Injunction Pursuant to Stipulation in the form attached as Exhibit A ("Second
9 Amendment to Final Judgment"), incorporated herein by reference. This Stipulation and
10 Proposed Second Amendment to Final Judgment was negotiated and executed in good faith and
11 at arms' length, by the Department and by Sunbank, to avoid protracted litigation regarding the
12 alleged violations of the HWCL.

13 4. **Jurisdiction and Venue.**

14 Jurisdiction exists over this matter pursuant to the Court's authority to enforce the
15 Judgments. (Final Judgment, Paragraph 6; Amendment to Final Judgment, Paragraph 22.) The
16 Parties also stipulate that this Court has jurisdiction to enter the Second Amendment to Final
17 Judgment.

18 5. **Waiver of Hearing and Appeal.**

19 Sunbank waives any right to a judicial or administrative hearing regarding this matter prior
20 to the entry of the Second Amendment to Final Judgment. Sunbank also waives any right to
21 appeal the Second Amendment to Final Judgment.

22 6. **Release/Matters Covered.**

23 This Second Amendment to Final Judgment is a final and binding settlement and release by
24 the Department, of all claims, alleged violations, or causes of action alleged in the Report, and in
25 the FR Findings, or which could have been asserted by the Department based on the facts alleged
26 in the Report or FR Findings, against Sunbank, its predecessors in interest, and its officers,
27 directors, shareholders, partners, employees, representatives, and agents up through February 10,
28 2010, the date of the Inspection by the Department. The provisions of this paragraph become

1 effective upon entry of the Second Amendment to Final Judgment and timely payment by
2 Sunbank of all amounts set forth in Paragraph 9 below. Nothing in the Second Amendment to
3 Final Judgment shall constitute or be construed as a satisfaction or release from liability for any
4 conditions or claims arising as a result of past, current, or future operations of Sunbank except as
5 provided herein. The Department reserves the right to initiate further actions as necessary to
6 protect public health or welfare or the environment notwithstanding Sunbank's compliance with
7 the terms of the Judgments and the Second Amendment to Final Judgment.

8 **7. Application of Settlement and Injunction.**

9 The injunctive provisions of the Second Amendment to Final Judgment are applicable to
10 Sunbank, its subsidiaries and divisions, its officers and directors, its agents, employees,
11 contractors, consultants, successors, assignees, and representatives, and all persons, partners,
12 corporations and successors thereto, or other entities, acting by, through, under, or on behalf of
13 Sunbank (collectively, "Enjoined Parties").

14 This Stipulation and Entry of this Second Amendment to Final Judgment shall in no way
15 impair the force or effect of, or change the Department's right(s) to enforce, or any rights
16 Sunbank has under, the original Final Judgment, entered March 27, 2007, or the Amendment to
17 Final Judgment, entered August 20, 2009 in this matter. The Second Amendment to Final
18 Judgment is in addition to the Judgments.

19 **8. Injunctive Relief.**

20 Enjoined Parties, pursuant to Health and Safety Code sections 25181 and 25184, shall do
21 the following:

22 8.1. Within 60 days from entry of this Second Amendment to Final Judgment, Sunbank
23 shall initiate and cause to be performed by a qualified and independent third party, a
24 comprehensive hazardous waste audit of conditions, operations and practices (Audit), to be
25 conducted at the facility located at 1740 Commerce Way, Paso Robles, California. The purpose of
26 the Audit is to better inform and expedite Sunbank's continuing environmental compliance
27 efforts, especially with regard to the HWCL and its associated regulations. The third party shall
28 be either a Registered Environmental Assessor or Professional Engineer, licensed in California,

1 and knowledgeable and experienced in environmental regulations, including but not limited to the
2 HWCL and its associated regulations, as well as other state, federal, and local environmental
3 laws, regulations, and ordinances.

4 8.2. Sunbank shall conduct an Audit every twelve months for a period of time not to
5 exceed 5 years.

6 8.3. By April 1, 2011, and by April 1 of each successive year thereafter, for up to 5 years,
7 Sunbank shall submit to the Department a report (Audit Report) that describes the Audit and
8 findings, analysis, conclusions, and recommendations resulting from the Audit. The Audit Report
9 shall include all measures taken, or timelines to be implemented, to address the findings,
10 conclusions, and recommendations identified in the Audit Report. Sunbank shall promptly
11 correct any violations discovered during the Audit as required by federal, state, and local law.

12 8.4. Following the initial Audit and each Audit thereafter, Sunbank shall provide the
13 Department with quarterly status reports on or before July 1, October 1, and January 1. The final
14 quarterly report shall be submitted on or before April 1 of the last year of required reporting, and
15 shall provide a summary of the past Audits, their findings, and Sunbank's actions from each
16 Audit.

17 8.4.1. The quarterly reports shall detail all actions taken or being taken to address the
18 findings, conclusions and/or recommendations in the Audit Report for that year.

19 8.4.2. The quarterly status report may also address additional items including, but not
20 limited to: hazardous waste training provided to employees, changes in hazardous waste
21 operations, changes in tiered permitting treatment operations and associated notifications,
22 revisions to the closure cost estimate, updates to financial responsibility mechanisms, tank
23 certifications and assessment reports, compliance status with local waste discharge permit
24 requirements, and adjustments to the waste water treatment system.

25 8.5. The findings of the Audit, Audit Report and quarterly report are in no way binding on
26 the Department or on Sunbank. The Department shall, in its sole discretion, determine the
27 classification associated with violations, if any, whether discovered as a result of an Audit,
28 inspection or any other method, and in no way delegates or waives its enforcement authority.

1 Sunbank in no way waives any defenses it may have to any alleged violations or any rights it may
2 have under law. Furthermore, the Department's action or inaction under this Stipulation and/or
3 the Second Amendment to Final Judgment and Permanent Injunction neither impairs nor waives
4 the Department's authority to enforce the HWCL or its associated regulations.

5 **8.6. Early Termination of Injunctive Requirements.**

6 Upon written confirmation from the Department, Sunbank may terminate the audit process
7 and quarterly reporting if the Department finds no Class I violations for a period of two
8 consecutive years.

9 8.6.1. A quarterly report will still be required, however, if there is any outstanding
10 corrective action and/or corrective activity that cannot be completed within the two consecutive
11 years where no Class I violation was found by the Department. Such quarterly reports will be
12 required until the corrective action and/or corrective activity has been completed and shall
13 document that completion.

14 8.6.2. The written confirmation will be provided by DTSC within ninety (90) days of
15 Sunbank's written request. No quarterly report will be required once Sunbank has submitted the
16 written request to terminate the audit process. If DTSC denies Sunbank's request to terminate the
17 audit process, quarterly reporting shall resume in the following quarter and provide information
18 about Sunbank's activities since its request for early termination.

19 **9. Monetary Settlement Requirements.**

20 9.1. Sunbank shall pay the Department the sum of Two Hundred Thousand Dollars
21 (\$200,000), in settlement of the Department's claims, as follows:

22 9.1.1. The sum of \$135,000, as and for civil penalties under the HWCL;

23 9.1.2. The sum of \$20,000 for the Department's administrative costs;

24 9.1.3. The payments for civil penalties and administrative costs are due within forty-
25 five (45) calendar days of entry of this Second Amendment to Final Judgment;

26 9.1.4. The sum of \$45,000 for a Supplemental Environmental Project (SEP) to be
27 proposed by Sunbank to the Department within six months of the entry of this Second
28 Amendment to Final Judgment subject to the following conditions:

1 a. Any proposed SEP and proposed cost figure for allowance must be
2 consistent with the Department's guidelines regarding SEPs
3 (<http://www.calepa.ca.gov/Enforcement/Policy/SEPGuide.pdf>) and approved by the Department
4 in writing at its sole discretion prior to implementation of the proposed SEP.

5 b. The Department's decision letter regarding the SEP will include its
6 approval decision, as well as the costs to be allowed (Allowed Cost) as noted below.

7 c. If Sunbank does not have a DTSC approved SEP within one year of the
8 date of entry of this Second Amendment to Final Judgment, Sunbank shall pay the \$45,000 to the
9 Department as civil penalties. If the Allowed Cost of the SEP is less than \$45,000, Sunbank shall
10 pay the Department, the difference between \$45,000 and the Allowed Cost of the SEP as civil
11 penalties.

12 d. Any such payment shall be due within forty-five (45) days of the date of
13 the Department's written notice to Sunbank of the amount owing, if any, under this provision, and
14 no later than thirteen (13) months from the entry of this Second Amendment to Final Judgment.

15 9.2. All payments required under the Second Amendment to Final Judgment shall be
16 made payable to the California Department of Toxic Substances Control, and mailed to:

17 Cashier
18 Accounting Office
19 Department of Toxic Substances Control
20 P.O. Box 806
21 Sacramento, CA 95812-0806.

22 9.2.1. The checks shall bear on their face the phrase "DTSC # HWCA 20092388."

23 9.2.2. A photocopy of all checks and payments made pursuant to this Second
24 Amendment to Final Judgment shall be sent, at the same time, to:

25 Charles A. McLaughlin, Performance Manager
26 State Oversight and Enforcement Branch
27 Enforcement and Emergency Response Program
28 Department of Toxic Substances Control
8800 Cal Center Drive
Sacramento, CA 95826-3200

1 Vivian Murai, Senior Staff Counsel
2 Office of Legal Counsel, MS-23A
3 Department of Toxic Substances Control
4 1001 I Street
5 P.O. Box 806
6 Sacramento, CA 95812-0806

7 and to

8 Rose B. Fua
9 Deputy Attorney General
10 State of California Department of Justice
11 Attorney General's Office
12 1515 Clay Street, 20th Floor
13 Oakland, CA 94612

14 Copies sent to Vivian Murai and Rose Fua may be electronic copies (i.e., Adobe PDF files
15 sent to vmurai@dtsc.ca.gov and rose.fua@doj.ca.gov, respectively) rather than paper copies.

16 9.3. If Sunbank fails to make any payment as provided above, Sunbank agrees to
17 pay interest at the rate established for civil judgments and to pay costs incurred by the
18 Department in pursuing collection including attorneys fees.

19 10. **Notice.**

20 10.1. All submissions and notices required by the Stipulation and Second
21 Amendment to Final Judgment shall be in writing, and shall be sent to:

22 The Department:

23 Charles A. McLaughlin, Performance Manager
24 State Oversight and Enforcement Branch
25 Enforcement and Emergency Response Program
26 Department of Toxic Substances Control
27 8800 Cal Center Drive
28 Sacramento, California 95826-3200

Patti Barni
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

//

//

1 Sunbank:

2 Kevin Kuhn, Vice President/General Manager
3 Joslyn Sunbank Company LLC
4 1740 Commerce Way
5 Paso Robles, California 93446

6 William D. Wick
7 Wactor & Wick LLP
8 180 Grand Avenue
9 Suite 950
10 Oakland, CA 94612

11 10.2. All approvals and decisions regarding any matter requiring approvals or
12 decisions under the terms of the Second Amendment to Final Judgment shall be communicated in
13 writing. No advice, guidance, suggestions or comments by employees or officials of the
14 Department regarding submittals or notices shall be construed to relieve Sunbank of its obligation
15 to obtain any final written approvals required by the Second Amendment to Final Judgment.

16 **11. The Department Not Liable.**

17 Neither the Department nor the State of California or any of its agencies, boards, or
18 departments (collectively, "State Entities") shall be liable for any injury or damage to persons or
19 property resulting from acts or omissions by Sunbank, its directors, officers, employees, parent
20 companies, affiliates, agents, representatives, or contractors in carrying out activities pursuant to
21 the Second Amendment to Final Judgment, nor shall the Department or any of the State Entities
22 be held as a party to or guarantor of any contract entered into by Sunbank, its directors, officers,
23 employees, agents, representatives, parent companies, affiliates, or contractors in carrying out
24 activities required pursuant to the Judgments or Second Amendment to Final Judgment.

25 **12. Compliance with Applicable Law.**

26 Sunbank shall implement the terms of the Second Amendment to Final Judgment in
27 compliance with all local, State, and federal requirements. Sunbank's compliance with this
28 Second Amendment to Final Judgment in no way reduces, changes, or eliminates its obligations
and duties under the Judgments.

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1 13. Access.

2 Nothing in the Second Amendment to Final Judgment is intended to limit in any way the
3 right of entry or inspection that the Department or any other agency may otherwise have by
4 operation of any law.

5 14. Sampling, Data, and Document Availability.

6 Sunbank shall permit the Department or its authorized representatives to inspect and copy
7 all sampling, testing, monitoring, and other data generated by Sunbank or on Sunbank's behalf to
8 comply with the HWCL and its associated regulations. Retention times for the above records,
9 and extensions thereof, shall be as specified in the applicable statutes and regulations.

10 15. Integration.

11 This Stipulation, together with exhibits, constitutes the entire agreement and understanding
12 of the parties with respect to the limited subject matter hereof. No representations, oral or
13 written, express or implied, other than those contained herein have been made by any party
14 hereto. No other agreements not specifically referred to herein, oral or written, shall be deemed
15 to exist or to bind any of the parties. This Stipulation may not be amended or supplemented
16 except as provided for in this Stipulation.

17 16. Authority to Enter Stipulation.

18 Each signatory to this Stipulation certifies that he or she is fully authorized by the party he
19 or she represents to enter into this Stipulation, to execute it on behalf of the party represented, and
20 to legally bind that party.

21 17. Modification of Stipulation and Final Judgment.

22 Neither this Stipulation nor the Second Amendment to Final Judgment may be modified
23 without written stipulation of the parties hereto and approval by the Court.

24 18. Parties Bound.

25 The Second Amendment to Final Judgment shall apply to and be binding upon Sunbank, its
26 subsidiaries and divisions, its parent companies, its officers and directors, its agents, employees,
27 contractors, consultants, successors, assignees, and representatives, and all persons, partners,
28 corporations and successors thereto, or other entities, acting by, through, under, or on behalf of

1 Sunbank, and upon the Department and any successor agency of the Department that may have
2 responsibility for and jurisdiction over the subject matter of this Second Amendment to Final
3 Judgment.

4 19. **Effect of Second Amendment to Final Judgment.**

5 Except for the provisions set forth in Paragraph 6, nothing in the Second Amendment to
6 Final Judgment shall constitute or be construed as barring the Department, or any other regulatory
7 body, from taking appropriate enforcement actions or otherwise exercising its authority under any
8 law, statute or regulation. Nothing in the Second Amendment to Final Judgment will reduce,
9 change or eliminate Sunbank's obligations under the Judgments.

10 20. **Entry of Judgment Required.**

11 This Stipulation to the Second Amendment to Final Judgment shall be null and void, and be
12 without any force or effect, unless the Court enters the Second Amendment to Final Judgment in
13 this matter.

14 21. **Governing Law.**

15 The terms of the Second Amendment to Final Judgment shall be governed by the laws of
16 the State of California.

17 22. **Retention of Jurisdiction.**

18 The Court shall retain jurisdiction of this matter for, among other things, purposes of
19 interpretation, implementation, modification, and enforcement of the Second Amendment to Final
20 Judgment. The Second Amendment to Final Judgment shall go into effect immediately upon
21 entry hereof. Entry is authorized immediately upon filing.

22 23. **Counterparts.**

23 This Stipulation may be executed in counterparts, each of which shall be deemed an original, and
24 all such counterparts taken together shall be deemed to constitute one and the same instrument.

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1 IT IS SO STIPULATED.

2 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

3
4
5 Dated: 1 DEC 10

Original signed by Charles A. McLaughlin
By: _____

6 Charles A. McLaughlin, Performance Manager
7 State Oversight and Enforcement Branch
8 Enforcement and Emergency Response Program

9 JOSLYN SUNBANK COMPANY LLC

10
11 Dated:

By:

12 Kevin Kuhn, Vice President/General Manager
13 Joslyn Sunbank Company, LLC

14
15 APPROVED AS TO FORM:

16 EDMUND G. BROWN JR.
Attorney General of the State of California
17 MATTHEW RODRIQUEZ
Chief Assistant Attorney General
18 KEN ALEX
Senior Assistant Attorney General
19 MARGARITA PADILLA
Supervising Deputy Attorney General
20 ROSE B. FUA
21 LAURA J. ZUCKERMAN
Deputy Attorneys General

22
23
24 Dated:

By:

25 ROSE B. FUA
Deputy Attorney General
26 Attorneys for Plaintiff
People of the State of California, ex rel.
27 Maziar Movassaghi, Acting Director, California
Department of Toxic Substances Control

1 IT IS SO STIPULATED.

2 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

3
4
5 Dated:

By:

Charles A. McLaughlin, Performance Manager
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program

8
9 JOSLYN SUNBANK COMPANY LLC

10
11 Dated: 12/1/2010

By:

Original signed by Kevin Kuhn

Kevin Kuhn, Vice President/General Manager
Joslyn Sunbank Company, LLC

14
15 APPROVED AS TO FORM:

16 EDMUND G. BROWN JR.
Attorney General of the State of California
17 MATTHEW RODRIQUEZ
Chief Assistant Attorney General
18 KEN ALEX
Senior Assistant Attorney General
19 MARGARITA PADILLA
Supervising Deputy Attorney General
20 ROSE B. FUA
21 LAURA J. ZUCKERMAN
Deputy Attorneys General

22
23
24 Dated:

By:

ROSE B. FUA
Deputy Attorney General
Attorneys for Plaintiff
People of the State of California, ex rel.
Maziar Movassaghi, Acting Director, California
Department of Toxic Substances Control

1 **IT IS SO STIPULATED.**

2 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

3
4
5 Dated:

By:

Charles A. McLaughlin, Performance Manager
State Oversight and Enforcement Branch
Enforcement and Emergency Response Program

8
9 JOSLYN SUNBANK COMPANY LLC

10
11 Dated:

By:

Kevin Kuhn, Vice President/General Manager
Joslyn Sunbank Company, LLC

14
15 **APPROVED AS TO FORM:**

16 EDMUND G. BROWN JR.
Attorney General of the State of California
17 MATTHEW RODRIQUEZ
Chief Assistant Attorney General
18 KEN ALEX
Senior Assistant Attorney General
19 MARGARITA PADILLA
Supervising Deputy Attorney General
20 ROSE B. FUA
21 LAURA J. ZUCKERMAN
Deputy Attorneys General

22
23
24 Dated: 12/1/10

Original signed by Rose B. Fua

By:

ROSE B. FUA
Deputy Attorney General
Attorneys for Plaintiff
People of the State of California, ex rel.
Maziar Movassaghi, Acting Director, California
Department of Toxic Substances Control

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WACTOR & WICK LLP

Dated: 12/1/10

By: Original signed by William D. Wick

✓ WILLIAM D. WICK
PETER TON
Attorneys for Defendant
Joslyn Sunbank Company LLC

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v Joslyn Sunbank Co.**

No.: **CV 070208**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 1, 2010, I served the attached **[PROPOSED] SECOND AMENDMENT TO FINAL JUDGMENT AND PERMANENT INJUNCTION** by transmitting a true copy via electronic mail. In addition, I placed a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1515 Clay Street, 20th Floor, Oakland, CA 94612-0550, addressed as follows:

William D. Wick, Esq.
Peter Ton, Esq.
Attorney at Law
Wactor & Wick, LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612
E-mail Address: bwick@ww-envlaw.com
E-mail Address: pton@ww-envlaw.com

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 1, 2010, at Oakland, California.

Erica A. Panoringan

Declarant

Original signed by Erica A. Panoringan

Signature